IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 8TH OCTOBER 2007 / 16TH ASWINA 1929

WP(C).No. 19892 of 2007(R)

OS.127/2002 OF SUB COURT, MANJERI

PETITIONER:

ATHIMANNIL HABEEB, AGED 34,
S/O LATE MOIDEEN, ANTHIMANNIL HOUSE,
MANJERI AMSOM, DESOM.

BY ADV. SRI.K.S.MADHUSOODANAN
SRI.T.V.JAYAKUMAR NAMBOODIRI

RESPONDENTS:

1. ASHRAF, S/O LATE MOIDEEN,
ATHIMANNIL HOUSE, MANJERI AMSOM,DESOM,
MANJERI-2.

2. SAKEER HUSSAIN, S/O LATE MOIDEEN,
ATHIMANNIL HOUSE, MANJERI DESOM, MANJERI-2.

3. SULFIKKAR, S/O LATE MOIDEEN,
ATHIMANNIL HOUSE, MANJERI AMSOM.

4. KHAIRUNNEESSA, D/O LATE MOIDEEN, -DO-

5. NASEEMA, -DO-

6. FAIZAL, S/O LATE MOIDEEN, -DO-

7. IQBAL, -DO-

8. POOZHIKUTHU KADIYUMMA,
W/O LATE MOIDEEN, -DO-

9. OTTAKATH MANKARATHODI ABDUL RASHEED,
S/O ABDUL HAMEED, MANJERI AMSOM, DESOM.

10. PALAYIL ALAVI HAJI, S/O AHAMMAD,
KARUVAMBRAM AMSOM.

11. KUNNATHODI MUHAMMADALI HAJI,
S/O MOOSA HAJI, PONMALA AMSOM.

12. SAMANA BUSINESS ESTABLISHMENT PVT.LTD.,
REP. BY M.D.ABDUL RASHEED, MANJERI AMSOM,DESOM.

BY ADV. SRI.BABU KARUKAPADATH --- R9
SMT.M.A.VAHEEDA BABU
SRI.P.S.ABDUL KAREEM -- R12

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 19892/2007 R

APPENDIX

PETITIONER'S EXHIBITS

EXT.P1. COPY OF THE ORIGINAL SUIT NO. 127/02 OF THE SUBORDINATE JUDGE, MANJERI DT. 25/10/02.

EXT.P2. COPY OF THE PETITION IA NO. 1430/06 IN OS NO. 127/02 FILED ON 5/10/06 BEFORE THE SUB COURT, MANJERI.

EXT.P3. COPY OF THE PETITION IA NO. 143106 IN OS NO. 127/02 -DO-

EXT.P4. COPY OF THE JUDGMENT IN WPC NO. 28267/06 DT. 2/1/07 OF THIS COURT.

EXT.P5. COPY OF THE IA NO. 580/07 IN OS NO. 127/02 DT. 14/03/2007.

EXT.P6. COPY OF THE ORDER IN OS NO. 127/02 DT. 16/6/07 OF THE SUBORDINATE JUDGE, MANJERI.

RESPONDENT'S EXHIBITS **NIL.**

True copy

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M.N. KRISHNAN, J.

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W.P.C. NO. 19892 OF 2007

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Dated this the 8th day of October, 2007.

J U D G M E N T

This writ petition is filed against the order of the learned Subordinate Judge, Manjeri in O.S.127/02. The suit as instituted was one for partition and later the plaintiff has amended the plaint where by he has sought for a declaration that a particular document is null and void. I do not find any consequential prayer so as to attract Section 25(b) of the Court Fees Act. Therefore, the prayer is under Section 25(a) of the Court Fees and Suit Valuation Act. It is under Section 25(a) of the Act. The modality of finding out the market value is enumerated under Section 7 of the Court Fees Act. So, I direct the Court below to conduct an enquiry regarding the market value as contemplated under the provisions of the Court Fees Act and thereafter give an opportunity to the plaintiff to pay the Court Fee whether it is under Section 7 (2), 7(3) or 7(3)(a) is a matter which requires to be

considered by the Court below. The Court is also empowered under Section 19 of the Court Fees Act to conduct an enquiry and investigate regarding that matter.

2. With these observations the order under challenge is set aside and the matter is remitted back to the Court below for fresh consideration and it shall give notice to all parties before finally disposing the matter.

The writ petition is disposed of accordingly.

M.N. KRISHNAN, JUDGE.

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